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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/502,080	10/08/2004	J. Philip Bowen	B40-002	3420
28156	7590	03/23/2011	EXAMINER	
COLEMAN SUDOL SAPONE, P.C.			GULLEDGE, BRIAN M	
714 COLORADO AVENUE			ART UNIT	PAPER NUMBER
BRIDGE PORT, CT 06605-1601			1612	
MAIL DATE		DELIVERY MODE		
03/23/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief		Application No. 10/502,080	Applicant(s) BOWEN ET AL.	
		Examiner Brian Gulledge	Art Unit 1612	
<p>--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</p> <p>THE REPLY FILED <u>28 February 2011</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input checked="" type="checkbox"/> The period for reply expires <u>3</u> months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> <p>NOTICE OF APPEAL</p> <p>2. <input checked="" type="checkbox"/> The Notice of Appeal was filed on <u>28 February 2011</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p> <p>AMENDMENTS</p> <p>3. <input checked="" type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input checked="" type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input checked="" type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: <u>See Continuation Sheet</u>. (See 37 CFR 1.116 and 41.33(a)).</p> <p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____.</p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input checked="" type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input checked="" type="checkbox"/> will not be entered, or b) <input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____.</p> <p>Claim(s) objected to: _____.</p> <p>Claim(s) rejected: <u>40,50-56 and 66</u>.</p> <p>Claim(s) withdrawn from consideration: _____.</p> <p>AFFIDAVIT OR OTHER EVIDENCE</p> <p>8. <input checked="" type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p> <p>REQUEST FOR RECONSIDERATION/OTHER</p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u>.</p> <p>12. <input type="checkbox"/> Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.</p> <p>13. <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u>.</p>				
<p>/Frederick Krass/ Supervisory Patent Examiner, Art Unit 1612</p>		<p>/Brian Gulledge/ Examiner, Art Unit 1612</p>		

Continuation of 3. NOTE: Applicant has proposed to amend claim 50 to add a further limitation to the number of cancers treated. Also, Applicant has proposed to add a new claim that depends from claim 50 (claim 67) for consideration. These limitations together were not previously considered in regard to the methods recited by claim 50, and further analysis would be required to determine whether these methods would have been enabled. A further search would also have to be made to determine the state of the art with regard to this issue.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments that the newly amended claims are patentable over the prior art references are moot at this time due to non-entry of the proposed amendment and the non-entry of the declaration.

Continuation of 13. Other: The Applicant notes that in the final rejection (28 October 2010) the information disclosure statement filed 28 September 2010 was not considered. The Examiner noted this statement failed to comply with 37 CFR 1.97(c) because it lacked the fee set forth in 37 CFR 1.17(p) or a statement as specified in 37 CFR 1.97(e). The Applicant states pursuant to various previous statements in the present application that the Commissioner was authorized to charge any fees due to a deposit account provided, and thus the fee necessary for the IDS was authorized, and if a fee was necessary the Office should have debited the fee. In light of this oversight by the Office, the Applicant requests the IDS now be considered. The IDS is not now considered. The Examiner notes that the transmittal letter that accompanied the IDS (received 28 September 2010) had boxes for each statement specified in 37 CFR 1.97(e) that could be checked (if applicable), and had a box that can be checked if the fee set forth 37 CFR 1.17(p) is being submitted. This box (for the fee) was not checked - instead the box for "None" was checked. Applicant's action made clear the fee was not being paid. The Office did not error by neglecting to debit this fee - Applicant's action (this transmittal letter) made clear the fee was not set forth.